

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

GABRIELA NIEVES,)
)
Plaintiff,)
)
v.) Case No. 1:20-cv-00320-JMS-DML
)
CARMEL CLAY SCHOOLS, *et al.*,)
)
Defendants.)

MOTION FOR LEAVE TO DISMISS ONLY DEFENDANT CHRIS PLUMB

Comes now Plaintiff Gabriela Nieves, by counsel, and pursuant to Fed. R. Civ. P. 41(a)(2) respectfully moves the Court for leave to dismiss only Defendant Chris Plumb from this matter, and in support thereof, states as follows:

1. Plaintiff filed her Complaint against Defendants Carmel Clay Schools, John Goelz, Chris Plumb, and Red Roof Inn on January 29, 2020. [Dkt. 1.]
2. On April 20, 2020, Defendant Plumb moved to dismiss the case against him for failure to state a claim, generally arguing statutory immunity as a public employee pursuant to I.C. § 34-13-3-5(b). [Dkt. 26 (Motion) and Dkt. 27 (Brief in Support).]
3. On April 23, 2020, Ms. Nieves moved for an extension of time (an additional 30 days) to answer Defendant Plumb's Motion to Dismiss. [Dkt. 28.] In support of her Motion, Ms. Nieves explained that the additional time was necessary to depose Mr. Plumb in order to adequately and accurately respond to his immunity arguments. The Court granted Plaintiff's Motion on April 24, 2020 [Dkt. 29], making Plaintiff's response to the Motion to Dismiss due on or before June 10, 2020.

4. Ms. Nieves deposed Defendant Chris Plumb via Zoom on May 8, 2020.

5. In light of Mr. Plumb's deposition testimony and his Motion to Dismiss arguments, Ms. Nieves has determined that pursuing her case any further against Defendant Chris Plumb would be futile.

6. Neither Defendant Chris Plumb nor Defendant Carmel Clay Schools objects to the dismissal, without prejudice, of Chris Plumb. Red Roof Inn, as yet unrepresented, has not been contacted.

7. Plaintiff originally named Chris Plumb as a Defendant in this matter in good faith, and her Motion for Leave to Dismiss him has been contemplated, and filed, in the same spirit. This Motion is not being filed for the purpose of prejudice or delay.

WHEREFORE Plaintiff Gabriela Nieves prays that the Court will grant her leave to dismiss only Defendant Chris Plumb, without prejudice, and for all other relief just and proper in the premises.

Respectfully submitted,

s/ Jessica A. Wegg

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CERTIFICATE OF SERVICE

I certify that the foregoing paper or pleading was filed with the Court on May 13, 2020 using the CM/ECF System. Service will be made on all registered counsel of record by operation of the same.

I further certify that a copy of this Motion has been sent via USPS First Class Mail, postage prepaid, to:

Red Roof Inn
Attn: Jignesh Patel
6325 South Scatterfield Road
Anderson, IN 46013

s/ Jessica Wegg
Jessica Wegg